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## DEATH OF THE WAR POWERS RESOLUTION IN SOMALIA

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. GILMAN. Mr. Speaker, today, August 4, 1993, may very well be remembered as the day that the War Powers Resolution died. Its death was caused by the election of President Clinton and by the erosion of popular support for his policy in Somalia.

Sixty days ago, on June 5, combat involving United States Forces broke out in Somalia and has continued ever since. Under any reasonable reading of the War Powers Resolution, the President was required to withdraw United States Forces from Somalia by today. He has not, and Congress has decided to look the other way. In so doing, Congress has acquiesced in a legal rationale that will make the War Powers Resolution a dead letter.

The War Powers Resolution provides that whenever U.S. Armed Forces are deployed into a situation of hostilities, or imminent involvement in hostilities in a foreign country, they must be withdrawn in 60 days unless Congress declares war or passes a joint resolution authorizing continuation of the deployment. United States Forces were first sent to Somalia on December 8, 1992. President Bush informed Congress at that time that he did not intend for U.S. Forces there to become involved in hostilities, meaning that the 60-day clock would not apply. While one could debate whether hostilities were imminent after December 8, in fact there was little combat, and therefore it was tenable to contend that the War Powers Resolution did not apply. President Clinton adopted the same position after taking office.

On February 4, 1993, the Senate passed Senate Joint Resolution 45, which would have provided an open-ended authorization for the Somalia operation. On May 25, the House passed its own version of Senate Joint Resolution 45, which differed from the Senate version principally in that it contained only a 12-month authorization.

I opposed Senate Joint Resolution 45 because I felt that the administration was not moving quickly enough to get United States Forces out of Somalia. This view was shared by many of my colleagues. My amendment to Senate Joint Resolution 45 calling for the withdrawal of all United States Forces from Somalia within 6 months, received 179 votes on the House floor.

In any event, the Senate has taken no further action on Senate Joint Resolution 45—such as appointing conferees or simply bring-

ing the House version to a vote, so Congress has not passed a joint resolution that would satisfy the requirements of the War Powers Resolution with regard to Somalia.

On June 5, serious fighting broke out in Mogadishu. U.S. Forces have engaged in considerable combat since that time, and by all accounts, southern Mogadishu is a war zone. No Americans have yet been killed, but over a dozen have been wounded.

On June 15, I wrote to Secretary of State Christopher to ask whether the United States was now in hostilities in Somalia, such that the 60-day clock applies. The administration responded on July 21. In essence, the administration said that Somalia involves only "intermittent military engagements," each lasting less than 60 days, and therefore, does not involve "sustained hostilities" that might compel the withdrawal of United States Forces after 60 days.

The problem with that logic, of course, is that all wars consist of a series of discrete military engagements. Under this reasoning, it would not be too difficult to argue that a conflict on the scale of World War II falls outside that War Powers Resolution. After all, Pearl Harbor, the Battle of Midway, and the Battle of the Bulge each lasted less than 60 days.

It appears that we are about to see the next application of this logic in Bosnia. The administration's proposal to launch air strikes against Serbian-held positions in Bosnia has been accepted by NATO and may soon be implemented. I understand that the administration does not believe that congressional authorization will be required under the War Powers Resolution if the United States begins bombing in Bosnia. I can only surmise that the administration's logic is the same as in Somalia—the air strikes will be intermittent in the sense that each one will last less than 60 days, and therefore, the 60-day clock will never expire.

This logic on the part of the executive branch is not new, but before today, Congress had never acquiesced in it. In an analogous situation in Lebanon in 1983, the Reagan administration argued that the deteriorating security situation facing U.S. peacekeepers in Beirut had not risen to the level of hostilities because the fighting was intermittent rather than sustained. Congress rejected this logic.

In the multinational force in Lebanon resolution, signed into law on October 12, 1983, Congress declared that hostilities broke out in Lebanon on August 29, 1983, after 2 days of combat around the Beirut airport, and that 60-day clock therefore had been triggered. The resolution went on to authorize the Lebanon deployment. Because the resolution was signed into law before the 60 days had expired, the question whether the deployment violated the War Powers Resolution was not reached.

This has not happened with regard to Somalia. President Clinton is adopting the same logic as President Reagan, but Congress has chosen not to challenge him the way it challenged President Reagan. Certainly part of the explanation lies in the fact that President Clinton is a Democrat while President Reagan was a Republican.

An additional consideration is that support for the operation in Somalia is eroding. It is likely that one reason the Senate has not taken up the House-passed Somalia resolution is that it might be defeated. Given the choice

between preserving the War Powers Resolution and forcing a contentious debate on an unpopular policy in Somalia, Congress has decided to throw the resolution overboard.

By looking the other way while the administration eviscerates the War Powers Resolution, Congress has avoided an embarrassing disagreement with our new President. But the precedent set today will be available to all future Presidents.

History will inevitably show that the War Powers Resolution died in Somalia.

CONGRESS OF THE UNITED STATES.

Washington, DC, June 15, 1993.

HON. WARREN M. CHRISTOPHER,  
Secretary of State, 2201 C Street, NW., Wash-  
ington, DC.

DEAR MR. SECRETARY: We are writing to request your assessment of the current situation in Somalia. Until now, the Administration has taken the position that the U.S. Armed Forces in Somalia are not in a situation of hostilities or imminent involvement in hostilities within the meaning of the War Powers Resolution. In our opinion, recent events in Mogadishu call for a reexamination of this conclusion.

According to press accounts, 23 Pakistani soldiers were killed and 59 wounded in guerrilla attacks on United Nations peacekeepers on June 5. The U.S. Quick-Reaction Force had to be called out to rescue besieged Pakistanis, and three U.S. soldiers were wounded in the combat. On June 6, the U.N. Security Council adopted a resolution calling for the arrest, prosecution, and trial of those responsible for the attacks.

Between June 5 and June 12, non-essential U.N. officials and foreign aid workers were evacuated from Mogadishu, and those who remained were relocated to a heavily fortified compound in preparation for assaults on arms depots and other facilities belonging to warlord Mohamed Farah Aided. U.S. AC-130 gunships were sent to Djibouti for use in these assaults, and over 2,000 U.S. Marines were ordered to redeploy from Kuwait to Somalia.

On June 12, the AC-130s attacked facilities in Mogadishu belonging to Aided. Attacks by U.S. aircraft and helicopters have continued daily since June 12. These attacks have prompted demonstrations by Somali supporters of Aided, including one in which Pakistani soldiers opened fire and killed at least 14 demonstrators.

In light of these facts, and in accordance with section 4(b) of the War Powers Resolution, we would appreciate your response to the following questions:

1. Were U.S. Armed Forces in Somalia in "hostilities" within the meaning of the War Powers Resolution on June 5?

2. Were U.S. Armed Forces in Somalia in "hostilities" or a situation "where imminent involvement in hostilities (was) clearly indicated by the circumstances" within the meaning of the War Powers Resolution between June 5 and June 12?

3. Have U.S. Armed Forces in Somalia been in "hostilities" within the meaning of the War Powers Resolution between June 12 and the date of this letter?

4. Have U.S. Armed Forces in Somalia been in "hostilities" or a situation "where imminent involvement in hostilities is clearly indicated by the circumstances" within the meaning of the War Powers Resolution at any time between the date of this letter and the date of your response?

5. Does the Administration anticipate that U.S. Armed Forces in Somalia will be in "hostilities" or a situation "where imminent involvement in hostilities is clearly indicated by the circumstances" within the meaning of the War Powers Resolution at

any time subsequent to the date of your response?

6. If U.S. Armed Forces in Somalia have been, are, or are anticipated to be in "hostilities" or a situation "where imminent involvement in hostilities is clearly indicated by the circumstances" within the meaning of the War Powers Resolution, does the Administration intend to withdraw U.S. Armed Forces from Somalia within 60 days in accordance with section 5(b) of the War Powers Resolution? If not, what will be the legal basis for the U.S. military presence in Somalia after 60 days have elapsed?

Your response to these questions will be of great use to Congress as it proceeds with consideration of S.J. Res. 45, the "Resolution Authorizing the Use of United States Armed Forces in Somalia."

Sincerely,

BENJAMIN A. GILMAN,  
Ranking Republican Member,  
Committee on Foreign Affairs;

JESSE HELMS,  
Ranking Republican Member,  
Committee on Foreign Relations.

U.S. DEPARTMENT OF STATE,  
Washington, DC, July 21, 1993.

Hon. BENJAMIN A. GILMAN,  
Committee on Foreign Affairs, House of Representatives, Washington, DC.

DEAR MR. GILMAN: Thank you for your letter of June 15 (signed also by Senator Helms) to the Secretary regarding the War Powers Resolution and Somalia. I am pleased to respond on behalf of the Secretary.

You have raised several specific questions regarding whether U.S. Armed Forces in Somalia have been involved in "hostilities" since June for purposes of the War Powers Resolution. These questions all relate to the deployment that was the subject of a June 10 report to Congress by the President, and which was the subject of a supplemental report by the President on July 1. Your questions were raised in the context of section 5(b) of the War Powers Resolution, which provides that, absent Congressional action, the use of U.S. forces is to be terminated within 60 or 90 days after those forces have been introduced into hostilities or into situations where hostilities are clearly indicated by the circumstances.

In our view, no issue is presented of compliance with section 5(b) of the War Powers Resolution (regardless as to whether it is constitutional). We note at the outset that no previous Administration has considered that intermittent military engagements involving U.S. forces overseas, whether or not constituting "hostilities," would necessitate the withdrawal of such forces pursuant to section 5(b) of the Resolution. The War Powers Resolution provision on withdrawal sixty days after forces are introduced into hostilities (with certain exceptions) was intended to apply to sustained hostilities so as to ensure that the collective judgment of both Congress and the President would be applied to decisions about whether to go to war.

This is not the situation we face in Somalia. As summarized in the President's report of July 1, the significant involvement of the U.S. Quick Reaction Force in the United Nations operation against Aideed's forces and compound has not involved sustained military action. These activities have been directed at those responsible for the murder or wounding of peacekeepers, as well as other criminal activity. While significant military force was used, our actions have been in support of the United Nations humanitarian mandate and have not been directed at the forces of a sovereign state, but rather at bandits or warlords. Moreover, as you know from the President's reports, U.S. Armed

Forces have made important contributions to the United Nations-led military action in support of U.N. peacekeeping efforts in Somalia.

Finally, both the House and Senate have voted in favor of bills that would provide express statutory authority to participate in peacekeeping efforts in Somalia (including authority for purposes of the War Powers Resolution). As we have stated before, although we do not believe that specific statutory authority is necessary, the Administration welcomes such Congressional support for U.S. activities in Somalia.

I hope this is useful to you. We look forward to further discussions with you on this important issue. Please feel free to communicate with me if I can be of further assistance.

Sincerely,

WENDY R. SHERMAN,  
Assistant Secretary,  
Legislative Affairs.